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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

SONYA DOFTER,

Plaintiff,

vs.

COSTCO WHOLESALE CORP; and
DOES 1 through 50 inclusive,

Defendants.

Case No: 2:22-cv-4577

**DEFENDANT COSTCO WHOLESALE
CORPORATION'S NOTICE OF
REMOVAL OF ACTION UNDER 28
U.S.C. SECTION 1441(B) DIVERSITY
AND DEMAND FOR JURY TRIAL;
DECLARATION OF JULIAN SMITH,
ESQ. IN SUPPORT THEREOF WITH
EXHIBITS**

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant COSTCO WHOLESALE CORPORATION (hereinafter, "Costco") by and through its counsel, hereby removes the above-captioned action from the Superior Court of the State of California, in and for the County of Orange, to the United States District Court for the Central District of California, Western Division, for the reasons described below:

1. Costco is the defendant in a civil action pending against it in the Superior

1 Court of California for the County of Los Angeles, entitled SONYA DOFTER v. Costco
 2 Wholesale Corporation; and DOES 1 through 50, Inclusive, Case Number
 3 21STCV07426, filed and served on or about February 25, 2021. A true and correct copy
 4 of the state court Complaint is attached hereto as Exhibit A.

5 2. A true and correct copy of Defendant Costco's Answer to Plaintiff's
 6 Complaint is attached hereto as Exhibit B, timely filed on March 29, 2021.

7 JURISDICTION

8 3. This is a civil action over which this Court has original jurisdiction under 28
 9 U.S.C. § 1332. This case may be removed to this Court by Costco pursuant to the
 10 provisions of 28 U.S.C. § 1441(b) in that it is a case that could have been commenced in
 11 federal court based on the fact that it is a civil action between citizens of different states,
 12 and that the amount in controversy exceeds the sum of \$75,000, exclusive of interests and
 13 costs.

14 4. Both at the time that this action was commenced and at this time, Costco is
 15 incorporated in the state of Washington and has its principal place of business in
 16 Washington. "For the purposes of removal . . . the citizenship of defendants sued under
 17 fictitious names shall be disregarded." 28 U.S.C. § 1441(a).

18 5. In accordance with, and pursuant to Indus. Tectonics, Inc. v. Aero Alloy, 912
 19 F.2d 1090, 1094 (9th Cir. 1990), if one state does not contain a substantial predominance
 20 of corporate operations, courts are to apply the "nerve center" test to determine a
 21 corporation's principal place of business. (Tosco Corp. v. Communities for a Better
 22 Environment, 236 F.3d 495, 500 (9th Cir. 2001).) The corporation's principal place of
 23 business is then determined by identifying the state "where the majority of the
 24 corporation's executives and administrative functions are performed." (Id.) This test is
 25 particularly appropriate where a corporation's activities are widespread and its operations
 26 are conducted in many states. (Indus. Tectonics, Inc. v. Aero Alloy, 912 F.2d at 1094; see
 27 also Lurie Co. v. Loew's San Francisco Hotel Corp., 315 F. Supp. 405, 412 (N.D. Cal.
 28 1970); see also Hertz Corp. v. Friend, 559 U.S. 77, 92-93 (2010) (holding that "principal

place of business” is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities. It is the place that Courts of Appeals have called the corporation’s “nerve center.” And in practice it should normally be the place where the corporation maintains its headquarters. . . .)

6. Here, Costco’s employees, sales, production activities, tangible properties, purchases, income, etc. are spread across multiple states and multiple countries and no one state substantially predominates. (See Declaration of Julian Smith, at ¶ 5.) Costco’s headquarters are located in Issaquah, Washington, where its executive officers operate out of. (*Id.*) The majority of Costco’s executive and administrative functions occur in Washington; and, Costco’s senior management are located in Washington. (*Id.*)

7. Costco is informed and believes that Plaintiff Sonya Doster (erroneously named Dofter in the Complaint) is a citizen of Los Angeles County, California, and a resident of Duarte, California. (See Exhibit A, Complaint, at p. 1, ¶ 1, stating that Plaintiff is “an adult resident of Los Angeles County, California.”; and See Exhibit C, Plaintiff’s Response to Form Interrogatory No. 2.5, listing Plaintiff’s address as “1305 Highland Avenue #1111, Duarte, CA 91010.”) Thus, Plaintiff is a natural person, domiciled in Duarte, in the County of Los Angeles, in the State of California, which, Costco is informed and believes, is the “location where [he] has established a fixed habitation or abode...and [intends] to remain there permanently or indefinitely.” (*Lew v. Moss*, 797 F.2d 747, 749-50 (9th Cir. 1986).)

8. Plaintiff, in her Complaint, alleges an incident that occurred on April 9, 2020, and states “Plaintiff was seriously injured when she tripped and fell over wooden boxes that Defendant placed near the entrance of the store without any signage, resulting in a severe injuries to Plaintiff.” (See Exhibit A, Complaint, at p. 3, ¶ 8.) As a result, Plaintiff alleges state law claims for premises liability and negligence.

9. Plaintiff alleges that “Plaintiff was severely injured as a direct result of a dangerous set up on Defendant's premises.... Plaintiff suffered severe injuries and

1 attendant damages. ("SUBJECT CONDITION"). See Exhibit A, Complaint, at p. 3, 5, ¶¶
2 8,19.)

3 10. Plaintiff, in the Complaint, also requests general damages and special
4 damages in the form of medical expenses, loss of earnings, and costs of suit, all according
5 to proof. See Exhibit A, Plaintiff's Complaint, at p. 7, ¶¶ Prayer for Relief.

6 11. In May 2022, plaintiff served a 998 Demand and produced medical records,
7 which indicated her total medical expenses were around at \$150,000 See (Exhibit C,
8 Plaintiff's Response to Defendant's Discovery Requests, and Exhibit D, Plaintiff's 998
9 Demand)

10 12. Based on the foregoing, Costco is informed and believes that Plaintiff is
11 claiming more than \$75,000 in damages, thus exceeding the statutory threshold to satisfy
12 the amount in controversy and invoking federal court jurisdiction.

13 INTRADISTRICT ASSIGNMENT

14 12. The state court action was filed in the County of Los Angeles, California,
15 which serves as the basis for assignment to the First Street U.S. Courthouse, located at
16 350 W. 1st Street, Los Angeles, California, 90012, of the United States District Court,
17 Central District of California, Western Division.

18 NOTICE TO PLAINTIFF AND STATE COURT

19 13. Immediately following the filing of this notice of removal of action, written
20 notice of this filing will be served on Plaintiff and will be filed with the Clerk of the
21 Superior Court for the County of Los Angeles, in accordance with 28 U.S.C. Section
22 1446(d).

23 DEMAND FOR JURY TRIAL

24 14. Costco demands a jury trial of twelve jurors pursuant to Federal Rule of Civil
25 Procedure 48.

26 WHEREFORE, Costco prays that the above-entitled action, currently pending in
27 the Superior Court of the State of California, in and for the County of Los Angeles, be
28 removed therefrom to the United States District Court for the Central District of

1 California, Western Division, and that this action proceed in this Court as an action
2 properly removed thereto pursuant to 28 U.S.C. section 1441, et seq.
3
4

5 DATED: July 1, 2022

McCUNE & HARBER, LLP

6
7 By: 

8 STEPHEN M. HARBER, ESQ.
9 JULIAN S. SMITH, ESQ.
10 Attorneys for Defendant, COSTCO
11 WHOLESALE CORPORATION
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PROOF OF SERVICE

STATE OF CALIFORNIA)
)
) ss.
)
 COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen and not a party to the within action; my business address is 515 South Figueroa Street, Suite 1100, Los Angeles, California 90071.

On July 5, 2022, I served the foregoing document described as **DEFENDANT COSTCO WHOLESALE CORPORATION'S NOTICE OF REMOVAL OF ACTION UNDER 28 U.S.C. SECTION 1441(B) DIVERSITY AND DEMAND FOR JURY TRIAL; DECLARATION OF JULIAN SMITH, ESQ. IN SUPPORT THEREOF WITH EXHIBITS**, on the interested parties as follows:

Shaun J. Bauman, Esq.
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 Attorneys for Plaintiff SONYA DOFTER

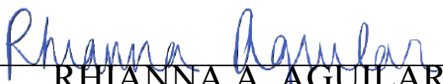
 X BY MAIL: I served the documents by enclosing them in an envelope and placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice of collection and processing of correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

 X BY ELECTRONIC TRANSMISSION: I caused to be transmitted a true and correct copy of the above-entitled document(s) to recipients via electronic service to the email address listed on the service list herein.

 (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

 X (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 5, 2022, at Los Angeles, California.


 RHIANNA A. AGUILAR